

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Wireless Telecommunications Bureau)	
Seeks Comment on a Petition for Waiver)	WT Docket No. 01-320
Of the Commission's Part 64)	DA 01-2660
Priority Access Service Rules -)	
Verizon Wireless)	
)	

COMMENTS TO PETITION FOR WAIVER

GREETINGS:

Gentlemen and ladies, in the interest of expedience, I will in this matter once again dispense with the customary citational, footnoted style of commenting, and instead speak in plain, obvious truths, and articulate sincere, basic concerns. Additionally, I feel compelled to submit that my interest in this matter is premised on only two merits: One, as a citizen and as a public safety service veteran as well as a wireless professional, I stand on patriotism in the furtherance of national security, and--two, as a wireless services subscriber and ratepayer, I stand for consumers' better interests--*period*.

I understand that on 2 November 2001, Verizon Wireless (Verizon) filed a petition for waiver (petition) in connection with its proposal to provide a type of "Priority Access Service" (PAS) to the National Communications System (NCS), in the above-captioned proceeding. I further understand that Verizon seeks a waiver of §64.402 of Federal Communications Commission (FCC or Commission) rules in order to provide an immediate type of PAS, not meeting regulatory requirements for priority levels and possibly for other technical-regulatory

irregularities. In these comments, I question the merits and validity of said petition on three points.

One, the premise of the petition as stated in the FCC Public Notice of 14 November 2001 (DA 01-2660) utterly fails to address the matter of how 911 distress calls fit preeminently within the proposed PAS structure. The need for this inclusion is so obvious that in all likelihood the proposed PAS concept anticipates the necessity of moving calls directly involving life safety to the very top of the priority queue where they clearly belong, and includes such provision as a *given*. Still one cannot simply assume that this is the case. So, I call this paramount concern into question and assert that any PAS system structure must include a high priority for calls identified as necessary for the immediate protection of life and property--simply, all 911 calls. *Without 911 call prioritization integration, PAS preempts not only consumers, but Public Safety Answering Point (PASP) officials as well.* Ironically, such a scenario would, in a disaster situation with PAS preempting consumers' calls in a given region, leave a number of our extremely valuable 911 calltakers idly twiddling their thumbs at the very height of the mayhem at hand! In this regard, PAS would be specifically *counterproductive* to public safety and national security objectives in preserving lives and in securing the Homeland, by *robbing PSAP personnel of one of their most valuable tools*, incoming 911 wireless call circuits. A PAS plan that does not adequately include 911 calls therefore, would be both insensitive and frankly, stupid.

Second, the petition fails to mention any provision for safeguards against abuse of PAS, by public officials. It is one matter to invoke PAS services during immediate times of disaster or enemy attack, and for the duration of response and recovery operations. It is another matter entirely to invoke PAS services for a planned event, such as the Olympic games, in any given

area. A planned event provides ample opportunity, particularly in terms of time, to properly equip such an event with adequate communications resources. Instead of appropriate and diligent planning though, public officials may come to rely on PAS as an impromptu, quick-and-dirty *bandage* solution” to cover for a lack of foresight and preparation.

I have already seen several press reports indicating that some officials concerned with the coming 2002 Winter Olympics in Salt Lake City, Utah, are anxious to have PAS operative in that region soon. Why? An Olympic event is not a disaster nor is it not an enemy attack. Why are adequate radio communications resources (presumably) not being deployed well in advance of the event? What possible use could public officials have for immediate use of the preemptive PAS in the Salt Lake City region? Ordering donuts, perhaps? PAS is not even available just yet and it appears that, in asking for immediate PAS availability in Salt Lake City, and by the instant potential waiver of the otherwise requisite Authorizing Agents, that *officials are already contemplating deliberate abuse of the PAS system.*

The “Washington Beat” column in the November, 2000 issue of *Popular Communications* magazine (Dixon, 62-64), carried an ominous depiction of what PAS could easily become without adequate control, situational use limitations, and oversight. It addresses the most fundamental concerns regarding the potential for abuse of PAS. Notice also the heretofore less than totally candid, arcane nature of the PAS rulemaking outcome. The article states in part:

“What if the FCC gave a cellular Priority Access Service party and you weren’t invited? ... If you are one of the many cellular or PCS subscribers who bought their cellular phone mainly for emergency and security purposes, you may soon find that when you need it most, your wireless phone may fail you. On July 13 [2000], the FCC established its new rules for

Priority Access Service (PAS) for Commercial Mobile Radio Service [CMRS] operators, in FCC 00-242. ... Priority Access is a scheme to allow particular government officials and other influential parties to gain access to the first channels available on a given wireless telephone system during a disaster or national emergency. ...

“Despite the magnitude of this action, ... [PAS] has received almost no publicity. As of this writing [21 July 2000], it is not mentioned in the news releases on the FCC’s Web home page, nor does it appear among the Wireless Telecommunications Bureau’s wireless headlines on the WTB Web page. I did not see word of it at the CTIA [Cellular Telephone Industry/Internet Association] Web site, either. Given the potential impact of Priority Access to wireless telephone subscribers, and the lack of press notices, Priority Access could be considered the cellular industry’s *Dirty Little Secret*.

“The FCC’s action in establishing wireless Priority Access is unprecedented. It is true that the president, under the War Emergency Powers, Section 706 of the Communications Act (47 USC §606), has long had broad authority to seize regular channels of communications for defense or national security use. But never has the ratepaying public been preempted from wireless telephone channels at the behest of government users as a matter of regular policy. It is easy to see why officials would want or need to gain immediate access to communications channels during a disaster. Anyone who has attempted to use a cellular phone during a disaster or even while caught in a traffic gridlock knows how easily circuits can become overloaded. The public safety community has actually complained to the FCC that cellular usage by the general public leads to congestion on cellular networks, ‘severely curtailing’ use by emergency personnel. When landline phones are out of service or when folks are on the road en mass, such as during an evacuation order, the first thing they do is pick up their wireless phones in order to

communicate. And why shouldn't they? They are *paying* for this valuable service that the industry has consistently promoted as being useful 'anytime, anywhere'. Of course, disaster relief personnel have a pressing need to communicate during a widespread emergency, so why shouldn't they have first crack at getting a cellular channel?

"Consider that ... government and public safety has always had their own sets of frequencies and their own radio systems and infrastructure.

"With the coming of the cellular era, John Q. Citizen finally had sophisticated, dependable, mobile communications at an essentially affordable price. Meanwhile, public sector communications systems have become more sophisticated with expanded use of repeater systems and the advent of trunked radio networks. *So, when is enough never enough? Well, when you're the government of course!* According to the FCC Report and Order on Priority Access, government services as well as utility operators need even more communications channels than they already have. *In reality, that becomes more channels than they have ever had.* The issue goes deeper than just disaster response, though. The Public Service Wireless Advisory Committee commented in FCC 00-242 that Priority Access during peak periods of traffic congestion would be required for commercial systems to be a reasonable alternative to spectrum dedicated for public safety communications. Day-to-day public safety dispatch use is something for which cellular systems were never designed.

"There are a few key technical and regulatory facts about Priority Access Service that one should know. PAS is intended for what the FCC refers to as National Security and Emergency Preparedness (NSEP) personnel. These include public safety personnel at the federal, state, and local levels. ... Certain private businesses, utilities in particular, may qualify for PAS. There will be five levels of priority, with *one* being the highest level. Applications for

PAS and the assignment of priority levels are to be administered by ‘Authorizing Agents’. These agents are to be established by the various state governments for all non-federal PAS applicants, and one Authorizing Agent will be established for federal users. The Report and Order does stipulate that PAS authorizations be limited to an unspecified minimum number of personnel, and suggests that those personnel be limited to those with command and control functions. PAS is to be available *at all times* to NSEP personnel. *Although Priority Access is clearly intended for emergency calls, FCC 00-242 offers little to protect consumers from abuse of the PAS system.*

“The National Communications System (NCS), ... will be charged with the day-to-day administration of PAS. ... Additionally, the Executive Office of the President (EOP) will administer the PAS system. This office will resolve disputed PAS assignments in the event the president invokes his War Emergency Power under Section 706 of the Communications Act. The EOP may issue supplemental PAS regulations and procedures, and must “periodically” report the status of PAS to the FCC. The FCC will provide regulatory oversight and enforcement for Priority Access Service and will act as final authority for approval and for dispute resolution of PAS assignments in peacetime situations. Finally, the Telecommunications Service Priority Oversight Committee will review ‘systemic’ PAS problems and recommend corrective action.

“ ... Additionally, a limited number of CMRS service technicians essential to network restoration will be granted highest priority status. ... The FCC says that authorized users would activate the feature on a per-call basis by dialing a feature code such as *XX (where X represents any digit.) *The PAS rules make no provision for any level of priority to be assigned to 911 emergency calls.* Yet the FCC has declared its PAS rules to be *prima facie* lawful, in order to

grant service providers some protection from liability from possibly violating the anti-discrimination provisions of Section 202 of the Communications Act (47 USC §202) in the provision of Priority Access to the authorized ‘preferred’ users.

“Was the Commission paying attention to important details? A footnote in FCC 00-242 claims that Priority Access will not be available with analog [AMPS cellular] systems. This is nonsense, since the AMPS cellular systems have for years had the Overload Access Class mechanism built in. This is a 16-level access priority function that has never been systematically used because it has not been [heretofore] lawful to do so. In spite of FCC 00-242, which established PAS by amending §§64.401 and 64.402 of the FCC rules, *Section 22.901 still requires that cellular system licensees must provide service ‘upon request’ to subscribers and roamers in good standing.* How will this remain possible in a disaster situation? The FCC also states [in FCC 00-242] that no members of the public filed objections to the Commission allowing commercial wireless providers to offer members of the public safety community priority over the general public in emergencies. Yet I am aware of at least one such [formal] filing in opposition to priority access schemes [the author’s own filed dissenting comments, WT 96-86, dated 26 June 1996]. One must wonder who ... [was] minding the store down at the Portals [and on M Street, under previous administrations].

“What can consumers do to ensure that they have the best possible wireless telephone coverage in an emergency situation? Are you [the consumer] bothered by the notion that a politician may surreptitiously decide that his routine business call during a rush-hour traffic jam is more important than your 911 call to get your injured child to a hospital? The savvy cellular user will inquire among his or her local wireless telephone service providers as to which of them doesn’t offer PAS. ...” [© 2000 Popular Communications, Alan Dixon, Hicksville, NY - Bracketed notes and

some emphasis added.]

Few, if any, of the concerns expressed above have been adequately addressed in either the original rulemaking or in the instant proceeding.

Third, have we learned nothing about the value of wireless telephone communications during the tragic events of September 11? Those advocating a rush to PAS need to consider the extreme personal value of wireless calls from those trapped inside attacked buildings and aboard hijacked airliners. Hundreds (or more, I dare to presume) of lives ended abruptly *with* closure, with final words of instruction and of love, and most importantly, in communal prayer to God. This, all facilitated by the miracle of contemporary wireless services, as anyone can see. Then there is the abortive airline hijacking Pennsylvania to consider. Several heroes emerged from among the passengers and crew who gave their lives directly engaging the enemy. These heroes very effectively stopped a fourth attack on another strategic American target, possibly the White House or the Capitol. The key to this important victory was wireless communications in the hands of the public. Had passengers not been able to call family, friends and even 911 dispatch centers, they would not have had the knowledge, that is the *strategic intelligence*, to understand the extent of the grave situation in order to take their most necessary actions. That is to say, had CMRS subscriber channels or AirFone channels been usurped by PAS activation in this very real-world situation, PAS would *again* have proven to be specifically *counterproductive* to public safety and national security objectives in preserving lives and in securing our Homeland.

If there is an *immediate* and *truly compelling* national security need to implement whatever form of Priority Access Service may be technologically available on short order, then it must be done, for the interim. In looking forward toward a more permanent technological implementation of PAS though, the Commission needs to consider carefully the well established

precedent and historical tradition that grants absolute priority to immediate safety-of-life distress communications--facilitating wireless tools for our nation's 911 callers and for our dedicated PSAP personnel, in the contemporary wireless world.

Finally, neither the Verizon petition at hand nor the Statement in Support of Petition for Waiver filed 2 November 2001 on behalf of the NCS by the Defense Information Systems Agency (DISA), indicates any effort at examining alternate national security and Homeland public safety wireless communications avenues. Are the nation's CMRS systems, which overload during larger-scale emergency situations, necessarily the best choice for national security communication? Why do we (apparently, according to some) not have sufficient interoperability built into our nation's public safety radio systems? This is precisely where such communications belong--on dedicated channels and circuits, not out in the public service domain.

I hereby certify that an attempt has been made to serve Mr. John T. Scott of Verizon Wireless, electronically at <john.scott@verizonwireless.com>, on or before the same date as electronic submission of this comments filing to the FCC Electronic Comments Filing System (ECFS).

SUBMITTED

This day, 19 November 2001

Alan Dixon

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